

CASE NO. 24-6486

In The Supreme Court of the United States

LUCIOUS BOYD,

Petitioner,

vs.

RICKY DIXON, SECRETARY, FLORIDA
DEPARTMENT OF CORRECTIONS,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED FOR REVIEW
[Capital Case]

Whether certiorari review should be denied where the Circuit Court determined that Petitioner's attempt to amend his previously denied habeas petition was a second or successive petition when the decision on the original petition was pending on appeal?

TABLE OF CONTENTS

QUESTION PRESENTED FOR REVIEW	i
TABLE OF CONTENTS.....	ii
TABLE OF CITATIONS.....	iii
CITATION TO OPINION BELOW	1
JURISDICTION	1
CONSTITUTIONAL PROVISIONS INVOLVED	1
STATEMENT OF THE CASE AND FACTS	2
REASONS FOR DENYING THE WRIT.....	9
Certiorari review should be denied because Petitioner pursued Rule 60(b) relief in a dilatory manner. Moreover, pre-AEDPA and a majority of the circuits post-AEDPA have agreed that a Rule 60(b) motion is a “second or successive” habeas application when the motion is filed after final judgment.	9
CONCLUSION	25
CERTIFICATE OF SERVICE	26

TABLE OF CITATIONS

Cases	Page(s)
<i>Balbuena v. Sullivan</i> , 980 F.3d 619 (9th Cir. 2020)	8
<i>Banister v. Davis</i> , 590 U.S. 504 (2020)	15, 16, 17, 20, 23
<i>Batson v. Kentucky</i> , 476 U.S. 79 (1986)	4
<i>Beaty v. Schriro</i> , 554 F.3d 780 (9th Cir. 2009)	16
<i>Bixby v. Stirling</i> , 90 F.4th 140 (4th Cir. 2024)	16
<i>Boyd v. Florida</i> , 546 U.S. 1179 (2006)	3
<i>Boyd v. Inch</i> , 2019 WL 3002922 (S.D. Fla. July 10, 2019)	6
<i>Boyd v. Jones</i> , 2017 WL 318931 (Fla. Jan. 23, 2017)	2, 5
<i>Boyd v. Sec’y, Dept. Corr.</i> , 114 F.4th 1232 (11th Cir. 2024)	1, 7, 8
<i>Boyd v. State</i> , 200 So. 3d 685 (Fla. 2015)	2, 5
<i>Boyd v. State</i> , 324 So. 3d 908 (Fla. 2021)	2, 6
<i>Boyd v. State</i> , 910 So. 2d 167 (Fla. 2005)	2, 3, 14
<i>Brown v. Davenport</i> , 596 U.S. 118 (2022)	13
<i>Bucklew v. Precythe</i> , 587 U.S. 119 (2019)	13
<i>Burton v. Stewart</i> , 549 U.S. 147 (2007)	12, 18
<i>Ching v. United States</i> , 298 F.3d 174 (2d Cir. 2002)	19, 20, 21
<i>Coinbase, Inc. v. Bielski</i> , 599 U.S. 736 (2023)	10
<i>Davenport v. United States</i> , 217 F.3d 1341 (11th Cir. 2000)	11
<i>David Johnson Const. Co., Inc. v. Clearing Consulting, Inc.</i> , 722 Fed. Appx. 934 (11th Cir. 2018)	12
<i>Duncan v. Walker</i> ,	

533 U.S. 167 (2001)	15
<i>Gonzalez v. Crosby</i> ,	
545 U.S. 524 (2005)	7, 16-18, 20, 21
<i>Griggs v. Provident Consumer Disc. Co.</i> ,	
459 U.S. 56, 103 S.Ct. 400, 74 L.Ed.2d 225 (1982)	23
<i>Hurst v. Florida</i> ,	
577 U.S. 92 (2016)	2, 5, 12
<i>Jacobs v. Tempur-Pedic Intern, Inc.</i> ,	
626 F.3d 1327 (11th Cir. 2010)	12
<i>Johnson v. United States</i> ,	
196 F.3d 802 (7th Cir. 1999)	16
<i>Magwood v. Patterson</i> ,	
561 U.S. 320 (2010)	17
<i>Mayle v. Felix</i> ,	
545 U.S. 644 (2005)	11
<i>McDonough Power Equip., Inc. v. Greenwood</i> ,	
464 U.S. 548 (1984)	5, 14
<i>Miller-El v. Cockrell</i> ,	
537 U.S. 322 (2003)	15
<i>Moreland v. Robinson</i> ,	
813 F.3d 315 (6th Cir. 2016)	8, 17
<i>Muniz v. United States</i> ,	
236 F.3d 122 (2d Cir. 2001).....	21
<i>Ochoa v. Sirmons</i> ,	
485 F.3d 538 (10th Cir. 2007)	8, 17
<i>Phillips v. United States</i> ,	
668 F.3d 433 (7th Cir. 2012)	8, 17
<i>Rivers v. Lumpkin</i> ,	
99 F.4th 216 (5th Cir. 2024).....	Passim
<i>Ross v. Adm'r E. Jersey State Prison</i> ,	
118 F.4th 553 (3d Cir. 2024)	23
<i>Shinn v. Ramirez</i> ,	
596 U.S. 366 (2022)	14, 15
<i>Tanner v. United States</i> ,	
483 U.S. 107 (1987)	11
<i>United States v. Santarelli</i> ,	
929 F.3d 95 (3d Cir. 2019).....	Passim
<i>Warger v. Shauers</i> ,	
574 U.S. 40 (2014)	10
<i>Whab v. United States</i> ,	
408 F.3d 116 (2d Cir. 2005).....	9, 19
<i>Williams v. Norris</i> ,	
461 F.3d 999 (8th Cir. 2006)	8, 17
<i>Woodford v. Garceau</i> ,	

538 U.S. 202, 123 S.Ct. 1398, 155 L.Ed.2d 363 (2003)	19
--	----

Statutes

28 U.S.C. §2244(b)	2
28 U.S.C. § 1254(1)	1
28 U.S.C. § 2241, 2243	14
28 U.S.C. §§ 2244 and 2255(h)	23
28 U.S.C §2254	5, 10
§ 2254(e)(2)(B)	

Rules

Federal Rules of Civil Procedure Rule 59(e) and 60(b)	16, 21
Rule 3.851, Fla. R. Crim. P	6
Rule 15	Passim
Rule 15(a)(2), F. R. C. P	7
Rule 59(b) [Fed. R. Civ. P	12
Rule 60(b)	Passim
Rule 60(b)(2)	11, 12, 13
Rule 60(b)(6) F. R. Civ. P	Passim
Rule 60(c)(1) Fed. R. Civ. P	12
Rule 62.1 F. R. C. P	7

CITATION TO OPINION BELOW

The decision on which Petitioner seeks discretionary review may be found at *Boyd v. Sec’y, Dept. Corr.*, 114 F.4th 1232 (11th Cir. 2024). This capital case is before this Court upon the decision of the United States Circuit Court of Appeals for the Eleventh Circuit wherein it affirmed the denial of Boyd’s motion to amend his original petition finding that the motion to amend was a second or successive petition given that the original federal habeas petition had been denied following an evidentiary hearing and that decision was pending on appeal.

JURISDICTION

Petitioner, Lucious Boyd (“Boyd”), is seeking jurisdiction pursuant to 28 U.S.C. § 1254(1). This is the appropriate provision.

CONSTITUTIONAL PROVISIONS INVOLVED

Respondent, Ricky D. Dixon, Secretary, Florida Department of Corrections (hereinafter “State”), accepts as accurate Petitioner’s recitation of the applicable constitutional provisions involved.

STATEMENT OF THE CASE AND FACTS¹

This is a capital case where the Petitioner attempted to amend his federal habeas petition while the district court's final decision on the original petition was pending on appeal. At issue here is whether an incarcerated state capital habeas petitioner may file an "amended petition" while his original petition is on appeal without the amendment being found to be a "second or successive petition" under 28 U.S.C. §2244(b).

Lucious Boyd is a death-sentenced Florida Prisoner. On April 14, 1999, Boyd was indicted for first-degree murder, armed kidnapping, and sexual battery of DD.² On January 30, 2003, guilty verdicts were returned on each count. (DE#30-R.1 6-7; ROA.3 461-63; ROA.5 2; R.7 378; ROA.8 457; ROA.20 1758-76, 2088-89). Following the March 11-12, 2002, penalty phase, the jury unanimously recommended death. (DE#30R.29 2388-91). On June 21, 2002, the court imposed a death sentence for

¹ The state court records filed conventionally with the district court (DE#30-33) will be referred to as: ROA: Direct Appeal SC02-1590; *Boyd v. State*, 910 So. 2d 167 (Fla. 2005), *cert. denied*, 546 U.S. 1179 (2006); 1PCR: First Postconviction Appeal SC13-244 *Boyd v. State*, 200 So. 3d 685 (Fla. 2015); H: Original State Habeas SC13-1959; *Boyd v. State*, 200 So. 3d 685 (Fla. 2015); 2H: Successive State Habeas raising *Hurst v. Florida*, 577 U.S. 92 (2016) issue SC16-1812; *Boyd v. Jones*, 2017 WL 318931 (Fla. Jan. 23, 2017) (unpublished). Supplemental records will be designated with an "S." Each record type will be followed by the volume and page number(s) where appropriate. An evidentiary hearing was granted by the district court. Those exhibits are found in DE#46 and the transcript in DE#47. The records from the state postconviction litigation following the federal evidentiary hearing were not filed with the district court as the federal habeas litigation did not depend on those materials. However, where necessary, they will be referenced as follows: 2PCR: Successive Postconviction Appeal raising *Hurst v. Florida* issue; *Boyd v. State*, case no. SC18-1589 (Fla. Mar. 19, 2020); and 3PCR: Successive Postconviction Appeal raising juror issue arising in federal evidentiary hearing; *Boyd v. State*, 324 So. 3d 908 (Fla. 2021) SC20-108.

² The victim's initials are used given the sexual nature of the crime involved.

DD's murder, 15 years for the armed kidnapping, and life for the sexual battery. (DE#30-ROA.3 498, 546-55; ROA.30 2494-2503).

The Florida Supreme Court affirmed the convictions and sentences on direct appeal. *Boyd v. State*, 910 So. 2d 167 (Fla. 2005). As the Florida Supreme Court recounted, Boyd kidnapped 21-year-old DD and took her to his residence where he inflicted non-penetrating stab wounds, bit, raped, and killed her. Boyd wrapped her body in materials from his home and church van before leaving DD in an alley. *Boyd*, 910 So. 2d at 174-76. Seminal fluid taken from [DD]'s thigh matched Boyd's DNA profile and showed "the probability of finding that type at random in the population [was] one in 1.45 quintillion." (DE#30-R.19 1642). *Boyd*, 910 So. 2d at 175-76. The bite marks on [DD]'s arm "were, within a reasonable degree of certainty, made by Boyd's teeth." *Id.* DD's blood was found in Boyd's home. Boyd was convicted and sentenced to death. *Id.* at 176-77.

On February 21, 2006, this Court denied certiorari. *Boyd v. Florida*, 546 U.S. 1179 (2006).

On February 14, 2007, Boyd filed his original postconviction motion and later, two amended motions. (DE#32 1PCR.3 328-403; DE#32-1 1PCR.8 1257 – 1PCR.12 2188; DE#32 1PCR.14 2545-87). The court held an evidentiary hearing and addressed claims of juror misconduct and ineffective assistance of counsel for not having challenged those jurors. The jurors involved did not testify at the hearing. During the hearing, defense attorney Laswell, who had over 40 years of experience practicing criminal law and selecting juries, testified that it was his

practice not to challenge jurors who had indicated prior difficulties with the criminal justice system. His “general proposition” was that jurors with criminal histories tended to be more favorable to the defense. Laswell had no specific recollection of one of the jurors involved (Striggles) or making a strategy decision respecting her. (DE#33-14 PCR31 5583-85). Attorney Ongley similarly believed that jurors with criminal histories would question the State and police, which could benefit Boyd’s defense based in part on accusing the police of planting evidence. (DE#31 PCR.31 5570-71, 5577, 5683-84, 5690). Neither Ongley nor Laswell testified to seeing anything to indicate Striggles could not be a fair juror. (DE#33-14 PCR.31 5686)

On January 7, 2013, the court denied postconviction relief and Boyd appealed. (DE#32-6 1PCR.23 4386-4446) He also filed a state habeas petition which he litigated simultaneously (DE#33-18). Boyd raised the juror misconduct claim on appeal, asserting that Juror Striggles’ concealment of her convicted felon status disqualified her from service, rendering the trial unfair and giving rise to a presumption of prejudice under the test for ineffective assistance of counsel in *Strickland v. Washington*, 466 U.S. 668 (1984). Alternately, Boyd asserted that even had he needed to prove actual prejudice, he had done so by showing that bias was inherent given Striggles’ status as a convicted felon whose civil rights had not been restored and that had he known of this it “may have influenced trial counsel to exercise a peremptory challenge.” (DE#33-17 1PCR IB 20-37). The Florida Supreme Court affirmed the denial of postconviction relief and denied the habeas petition.

Boyd v. State, 200 So .3d 685 (Fla. 2015).³

On October 28, 2016, Boyd filed a federal habeas corpus petition under 28 U.S.C §2254. (DE#1). The case was stayed so that Boyd might litigate an issue arising under *Hurst v. Florida*, 577 U.S. 92 (2006). Upon return to federal court, Boyd was not permitted to amend his petition with the *Hurst* claim. The district court concluded that Boyd was entitled to an evidentiary hearing on the juror misconduct issue under *McDonough Power Equip., Inc. v. Greenwood*, 464 U.S. 548 (1984).

During the evidentiary hearing, Juror Striggles gave testimony regarding her state court voir dire responses and provided additional information of her familial relationship with Boyd, her prescription medicine use, and more information about her pre-trial knowledge of the murder. This information was not the subject of the *McDonough* inquiry. Following the evidentiary hearing, Boyd did not seek to amend his petition to add a claim regarding the new information Juror Striggles offered at the federal hearing. Likewise, he did not seek to stay his original habeas petition to exhaust any claim he had in state court arising from Juror Striggles' federal testimony. Instead, he and the State filed their post-hearing memoranda. (DE#46-49). Based on the district court's *de novo* review, credibility determinations, and factual findings, the court denied the juror misconduct claim along with the balance

³ During the rehearing on the postconviction appeal, *Hurst v. Florida*, 577 U.S. 92 (2016) was decided and Boyd was permitted to supplement his motion. The rehearing was denied, but Boyd was permitted to file a successive state habeas petition raising *Hurst* which was denied later. *Boyd v. Jones*, 2017 WL 318931 (Fla. Jan. 23, 2017).

of the federal habeas issues.⁴ *Boyd v. Inch*, No. 16-62555-CIV, 2019 WL 3002922 (S.D. Fla. July 10, 2019). A certificate of appealability was issued for the Juror Striggles misconduct issue (DE#52) and Boyd appealed (case number 19-13051-P). Boyd moved the Eleventh Circuit Court of Appeals to expand his COA and to stay the appeal so he might litigate in state court what Boyd considered to be new information of juror misconduct arising out of the federal evidentiary hearing.⁵

Almost a year following the federal evidentiary hearing, on September 18, 2019, Boyd returned to state court and litigated a successive Rule 3.851 motion, once again challenging Juror Striggles, but now pointing to her federal testimony. Following the resolution of his successive state postconviction litigation, Boyd returned to the Eleventh Circuit where he sought a remand to the district court for either an indicative ruling or permission to reopen his federal habeas petition. At the same time, he moved the district court “to reopen his habeas proceedings and permit him leave to amend his federal habeas petition under Rule 15(a)(2), Fed. R. Civ. P., or alternatively to grant relief under Rule 60(b)(6), Fed. R. Civ. P., and for an indicative ruling under Rule 62.1, Fed. R. Civ. P. Boyd admitted that his ground

⁴ The district court concluded: “Striggles did not deliberately or maliciously mislead the state court during voir dire.” “[S]he answered the single question at issue to the best of her intellectual abilities and limited understanding of the criminal justice system.” (DE#52 at 39); *Boyd v. Inch*, No. 16-62555-CIV, 2019 WL 3002922 at *20-21 (S.D. Fla. July 10, 2019).

⁵ Boyd returned to state court and litigated a successive postconviction motion raising a newly discovered evidence claim of juror misconduct based on Striggles’ federal hearing disclosures that she was related by marriage with Boyd’s brother and felt “stoned” during trial. The state postconviction court denied relief summarily and the Florida Supreme Court affirmed. *Boyd v. State*, 324 So. 3d 908, 913 (Fla. 2021).

for relief was based on “newly revealed evidence of juror misconduct” based on the juror’s federal evidentiary testimony and asserted “[t]he extraordinary circumstances [Juror Striggles’] testimony presents are not one-in-the same as the claim of juror misconduct which was presented to [the district court] in Mr. Boyd’s original habeas proceedings.” (DE#56 at 14 and 57).

On September 23, 2021, without “express[ing] or imply[ing] an opinion” on the motion before the district court, the Eleventh Circuit denied Boyd’s motion to relinquish jurisdiction because the district court had not issued any rulings on Boyd’s motions. On December 23, 2021, the district court decided Boyd’s Rule 60(b) motion was an unauthorized second or successive habeas petition under *Gonzalez v. Crosby*, 545 U.S. 524, 528-32 (2005), as Boyd was adding a new claim or evidence. The district court ruled that Rule 15 had “no application” here as a final judgment had been entered, which Boyd had appealed. The motion for an indicative ruling was found moot. (DE#63 at 6-12)

Boyd appealed and was given case number 22-10299-P. Following the oral argument for the 2022 appeal, the Eleventh Circuit concluded that Boyd’s appeal of the district court’s judgment on the original petition divested the district court of jurisdiction, except in limited circumstances not applicable here; thus, the denial of the Rule 15 motion was proper. Further, the appellate court agreed that Boyd’s alternate Rule 60(b) motion was an unauthorized second or successive petition for which Boyd had not obtained leave. *Boyd v. Sec’y, Dep’t of Corr.*, 114 F.4th 1232, 1236–39 (11th Cir. 2024). The appellate court found that Boyd’s amended petition,

which “raised the same six claims the district court denied on the merits two years before and added new evidence in support of one of them,” was a second or successive” application under §2244(b) and *Gonzalez. Boyd v. Sec’y, Dep’t of Corr.*, 114 F.4th at 1236–39. The Eleventh Circuit, quoting *Gonzalez*, 545 U.S. at 531, agreed that a “habeas petition that presents new evidence in support of a claim that was adjudicated on the merits in an earlier application ‘is in substance a successive habeas petition and should be treated accordingly.’” *Boyd v. Sec’y, Dep’t of Corr.*, 114 F.4th at 1239. The court noted that it was joining the majority of its sister circuits in holding that a motion to amend a federal habeas petition filed after the district court had entered its final judgment and while an appeal remained pending should be treated as a second or successive application under § 2244(d). *Boyd v. Sec’y, Dep’t of Corr.*, 114 F.4th at 1238 n.3. It acknowledged that the Second and Third Circuits had taken a different view, holding that “so long as appellate proceedings following the district court’s dismissal of the initial petition remain pending when a subsequent petition is filed, the subsequent petition does not come within AEDPA’s gatekeeping provisions for ‘second or successive’ petitions.” *Id.* (citations omitted). Because Boyd had not sought prior approval from the appellate court to file his new petition, the Eleventh Circuit affirmed. *Id.*

REASONS FOR DENYING THE WRIT

Certiorari review should be denied because Petitioner pursued Rule 60(b) relief in a dilatory manner. Moreover, pre-AEDPA courts and a majority of the circuits post-AEDPA have agreed that a Rule 60(b) motion is a “second or successive” habeas application when the motion is filed after final judgment.

Relying on this Court’s grant of certiorari in *Rivers v. Lumpkin*, case number 23-1345, Boyd asserts that certiorari should be granted to resolve a conflict between the circuits regarding whether a motion to amend a federal habeas petition filed during the pendency of an appeal from denial of the original habeas petition should be considered “second or successive” under §2254. He maintains that his motion to amend should not have been considered “second or successive” under Rule 60(b), Fed. R. Civ. P., just because his appeal of his original petition was pending before the circuit court. The Eleventh Circuit, in agreement with seven other circuit courts, found that Boyd’s attempt to amend his original petition while it was on appeal was properly determined to be a “second or successive” petition which required prior circuit court approval under §2244 which Boyd had not secured.

This Court has already granted certiorari in *Rivers v. Lumpkin* and heard oral argument on March 31, 2025, regarding, in part, whether there is conflict between the circuits concerning whether an incarcerated petitioner may amend his federal habeas petition while his original petition is pending on appeal without the amendment being considered a “second or successive” application under §2244(b). While a similar claim is raised here, the facts of this case provide support for the

denial of certiorari irrespective of any conflict in the circuits. Furthermore, the facts of this case establish that Boyd falls within the vast majority of the circuits finding a motion to amend filed while the original petition is pending on appeal is “second or successive” under §2244(b), necessitating circuit court approval to proceed. This position furthers the intent of §2254.

This Court should deny certiorari because the district court did not have jurisdiction to hear Boyd’s motion under Rule 15, Fed. R. Civ. P. The court had already entered its final judgment and Boyd’s appeal of that judgment was pending. Alternately, this Court should deny certiorari because Boyd raised his Rule 60(b) motion for relief from judgment in a dilatory manner.⁶ Not only did Boyd fail to seek to amend under Rule 15, Fed. R. Civ. P., during the approximate 10 months prior to the district court’s ruling on the habeas petition, he then waited an additional two months to file his successive state postconviction motion and then further waited until after the Florida Supreme Court affirmed the denial of the successive state

⁶ Additionally, certiorari should be denied because the district court’s decision on the original petition was final and on appeal, rendering Boyd’s reliance on Rule 15, Fed. R. Civ. P., misplaced and foreclosing any amendment. *See Coinbase, Inc. v. Bielski*, 599 U.S. 736, 740 (2023) (recognizing that an appeal “divests the district court of its control over those aspects of the case involved in the appeal”). Further, the federal evidentiary hearing should not have been granted and none of the federal evidentiary testimony from Juror Striggles should have been available to challenge Boyd’s conviction and sentence for a second time under *Warger v. Shauers*, 574 U.S. 40 (2014) (holding Rule 606(b) does not allow juror impeachment of a claim that the juror lied during voir dire, *citing Tanner v. United States*, 483 U.S. 107 (1987)). Similarly, raising the claim would be futile where Boyd has not shown biases against the defendant based on Striggles’ federal testimony and the fact that the defense was intentionally seeking to keep Striggles on the jury. However, given the limited issue in Boyd’s certiorari petition, the State will reserve this argument for subsequent litigation or briefing if so ordered.

postconviction motion to file anything in federal court. His subsequent attempt to reopen his petition was untimely under Rule 60(b)(2) and unreasonable under Rule 60(b)(6). In total, Boyd let three years pass before seeking to amend his petition.

Also, the “new” evidence of juror misconduct, as conceded by Boyd in his Rule 60(b) motion, is “not one-in-the same as the [original] claim of juror misconduct” raised originally in federal court. It is thus time barred under *Mayle v. Felix*, 545 U.S. 644 (2005); *Davenport v. United States*, 217 F.3d 1341 (11th Cir. 2000). It is a quintessential “second or successive” petition. Conversely, if the new evidence is considered in support of an original claim, Boyd is attacking the same conviction and sentence that was the subject of his original habeas petition. He has not identified “new” diligently pursued evidence that “would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.” § 2254(e)(2)(B) Boyd thus runs afoul of §2244 and this Court should not grant certiorari.

The circuit court properly found that the district court did not have jurisdiction to grant Boyd’s Rule 15 motion, which was filed while the judgment on his first-in-time petition was pending. It is well-settled that a district court’s ruling on the merits resolves all substantive issues and ends a petitioner’s litigation before a district court. *See Burton v. Stewart*, 549 U.S. 147, 157 (2007); *Jacobs v. Tempur-Pedic Intern, Inc.*, 626 F.3d 1327, 1344 (11th Cir. 2010); *David Johnson Const. Co., Inc. v. Clearing Consulting, Inc.*, 722 F. App’x 934, 937 (11th Cir. 2018). Boyd’s Rule

15 motion had to be accompanied by a Rule 60(b) motion because the final judgment had to be vacated before the Rule 15 motion could be granted. While Boyd did later file a Rule 60(b) motion, he was dilatory.

Rule 60(b)(2) allows relief from judgment based on “newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b).” Such a claim must be brought within a year of discovery under Rule 60(c)(1), Fed. R. Civ. P. The evidence to which Boyd points was revealed during the federal evidentiary hearing, some 10 months *before* the district court ruled on the habeas petition. Certainly, Boyd could have attempted to amend under Rule 15 or moved to stay so he could attempt to exhaust in state court as he had done when the *Hurst v. Florida* issue arose. He took neither course of action, thus foreclosing relief under Rule 60(b)(2).

Likewise, Boyd’s decision not to seek relief at the time the “new” testimony was provided at the federal evidentiary hearing rendered his later actions dilatory and untimely. Instead of acting immediately, Boyd waited for the district court’s final judgment, filed an appeal with the circuit court, waited another two months to file a successive state postconviction motion and then awaited the Florida Supreme Court’s opinion. As a result, it was almost three years before Boyd moved the federal court to consider his “new” evidence claim and his motion for relief from judgment under Rule 60(b). While Rule 60(b)(6) allows a district court to grant relief from judgment for “any other reason that justifies relief,” it is incumbent upon a petitioner to use diligence in pursuit of his claim. As recognized in *Bucklew v.*

Precythe, 587 U.S. 119, 149-51 (2019), this Court has criticized excessive delays in capital cases, because the state and crime victims have an “important interest in the timely enforcement of a sentence” and that those interests are frustrated by “excessive,” “long delays.” This Court directed federal courts to protect against dilatory suits and to “protect settled state judgments.” *Id.* at 150-51. Waiting almost three years to move to amend his habeas petition, even though he knew of the “new” information before a judgment had been entered, shows Boyd’s motion was not presented in a reasonable time under Rule 60(b)(6). These defects warrant denial of certiorari review here.

Moreover, the “new” evidence⁷ of Juror Striggles’ alleged misconduct does not establish factual innocence under §2244. The underlying *McDonough* claim presented does not establish Boyd’s factual innocence as required. At best, Striggles’

⁷ Even if Boyd could show entitlement to reopen his habeas case, under AEDPA he “must still” persuade a federal habeas court that “law and justice require relief.” *Brown v. Davenport*, 596 U.S. 118, 134 (2022) (citing 28 U.S.C. §2241, §2243). A habeas petitioner is “never entitled to habeas relief” unless he persuades the federal habeas court that both “law and justice require it.” *Shinn v. Ramirez*, 596 U.S. 366, 377 (2022). Habeas relief is not justified in a capital case by the presence of a juror whose bias, if any, was against the State Attorney’s Office who had repeatedly prosecuted her in the past. The underlying newly claimed error here is that Striggles did not disclose that her first-cousin was married to Boyd’s brother, that she knew more about the case than revealed in voir dire, and that she was on prescription medications during the trial. The familiar relationship with Boyd shows bias for the defendant; she was not asked the specifics of her knowledge about the case; and she was not asked how she was feeling mentally during the trial. If anything, Striggles’ potential bias harmed the State, not Boyd. Defendants cannot complain about jurors that are biased in their favor or complain that the service of such a juror violated their right to an impartial jury. Moreover, where the defendant’s counsel testified that he would have accepted a convicted felon on the jury and left it to the prosecutor to move to strike, law and justice demands that habeas relief be denied.

misconduct might have given the defense a basis to exercise a peremptory challenge. Yet given Striggles' familial connection to Boyd, it cannot be said that defense counsel would have stricken her or that she was an actually biased juror against the defendant under *McDonough*, 464 U.S. at 556. This is not a constitutional claim warranting relief. Furthermore, it does not call into question Boyd's guilt. As set forth in the Florida Supreme Court's opinion on direct appeal, the forensics of this case, the eyewitness, the blood, the semen, the DNA, the dental match to the tooth marks on the victim, and the fingerprints establish that Boyd was the person who kidnapped, raped, and killed DD in December 1998. *Boyd*, 910 So. 2d at 174-77. Challenging Striggles' placement on the jury does not refute those facts; it does not show factual innocence.

Finally, both pre- and post-AEDPA cases treat Rule 60(b) motions filed during the pendency of an appeal as "second or successive" applications, thus supporting the Eleventh Circuit Court's conclusion. That court's decision agrees with seven other circuits including the Fifth Circuit Court of Appeals which decided *Rivers v. Lumpkin*. These cases treat a Rule 60(b) motion as a "second or successive" habeas application when it re-challenges a state conviction and sentence which was the subject of a prior habeas petition and the district court had entered its final judgment. Boyd nevertheless urges this Court to find otherwise, suggesting that the appropriate dividing line should be after an appellate court has affirmed that judgment on appeal. Until then, Boyd asserts that a petitioner has not had a full airing of his habeas application. However, Boyd's argument conflicts with pre-

AEDPA treatment of such petitions and contravenes Congress’s intent in enacting AEDPA to promote finality in state convictions. It also is contrary to the limited authority of federal courts to grant habeas relief and AEDPA’s goal of its furthering “principles of comity, finality, and federalism.” *Duncan v. Walker*, 533 U.S. 167, 178 (2001). *See also Shinn v. Ramirez*, 596 U.S. 366, 390 (2022)

In *Banister v. Davis*, 590 U.S. 504 (2020), this Court analyzed the difference between Rules 59(e) and 60(b) and their application in habeas litigation post-AEDPA. There, this Court concluded that a Rule 59(e) motion was not “second or successive” application under AEDPA nor was it an “abuse of the writ” under pre-AEDPA treatment because it was consistent with the courts’ common law power to alter or amend its own judgment during a finite period of time. Initially a court could reconsider the judgment during the “term of court,” but now a party must file its Rule 59(e) motion within 28 days. Any ruling on the Rule 59(e) motion then merges with the prior judgment, which then may be appealed. *Banister*, 590 U.S. at 507-09. This Court concluded that when Rule 59(e) was considered in light of §2244(b)’s restriction on “second or successive” applications, it did not meet the historical meaning of “second or successive.”

Conversely, both historically and as this Court found in *Gonzalez v. Crosby*, 545 U.S. 524 (2005), Rule 60(b) motions are treated as “second or successive” applications and “abuse of the writ petitions” where the district court has entered a final judgment and the petitioner makes another attempt to challenge his state conviction and sentence. This Court has recognized that “[v]irtually every Court of

Appeals to consider the question [of how to treat a Rule 60(b) motion raising a new claim] has held that such a pleading ... is in substance a successive habeas petition and should be treated accordingly.” *Id.* at 531. Boyd’s Rule 60(b) motion falls under this definition as he is claiming newly discovered evidence. His original petition was denied on the merits, including a claim of juror misconduct, and while his appeal was pending, he sought to raise a new claim again asserting juror misconduct. As such, the Eleventh Circuit properly identified the motion under §2244(b) and denied relief as Boyd had not sought leave to file such an application. That decision is in accord with seven other Circuit Courts. *See Bixby v. Stirling*, 90 F.4th 140 (4th Cir. 2024); *Rivers v. Lumpkin*, 99 F.4th 216 (5th Cir. 2024); *Moreland v. Robinson*, 813 F.3d 315, 325 (6th Cir. 2016); *Phillips v. United States*, 668 F.3d 433, 435 (7th Cir. 2012), *as amended on denial of reh’g and reh’g en banc* (Feb. 21, 2012); *Johnson v. United States*, 196 F.3d 802, 805 (7th Cir. 1999); *Williams v. Norris*, 461 F.3d 999, 1002-03 (8th Cir. 2006); *Beaty v. Schriro*, 554 F.3d 780, 783 n.1 (9th Cir. 2009); *Ochoa v. Simons*, 485 F.3d 538, 540 (10th Cir. 2007). The Seventh Circuit noted that “[t]reating motions filed during appeal as part of the original application ... would drain most force from the time-and-number limits in §2244 and §2255.”

Again, treating Rule 60(b) motions challenging the same conviction and sentenced resolved by a district court’s judgment on the merits as a “second or successive” petition even if the original petition is pending on appeal is consistent with AEDPA’s goals of finality, comity, and federalism. It is also consistent with this Court’s opinions in *Gonzalez v. Crosby*; *Magwood v. Patterson*, 561 U.S. 320,

331 (2010); and *Banister v. Davis*. To carve out a situation where a Rule 60(b) motion is not considered “second or successive” merely because an appellate court has yet to decide the appeal of the original habeas judgment would conflict with these goals. Boyd attempted to add a new claim challenging the conviction and sentence at issue in his original habeas petition. The “new” evidence was known to Boyd some ten months *before* the district court entered its judgment and three years before he filed his Rule 60(b) motion. Boyd’s “new” claim either added facts to an existing claim of juror misconduct or added a brand-new claim of juror misconduct. Under either theory, Boyd failed to allege factual innocence.

Moreover, the new information would not maintain a constitutional challenge as at best it merely supported a preemptory challenge, a challenge counsel stated he would not have sought as he wanted Juror Striggles on the jury.⁸ To permit Boyd to add a “new” claim or additional evidence in support of a resolved claim while his case is on appeal would conflict with AEDPA and foster piecemeal and extended litigation. *Burton v. Stewart*, 549 U.S. 147, 157 (2007) (holding that a district court must dismiss a petition “for lack of jurisdiction” if the petitioner does not obtain the court of appeal’s authorization before filing it); *Gonzalez*, 545 U.S. at 530-32.⁹ The

⁸ As noted above, Juror Striggles’ demographics fit the type of juror the defense sought, and defense counsel averred they would not have stricken Striggles. Furthermore, any family connection between Striggles and Boyd did not meet the connection necessary for a statutory for-cause challenge and, equally important, does not show that Striggles was actually biased against the defendant as required by *McDonough*.

⁹ As provided in *Gonzalez*:

bright-line demarcation of a final judgment to differentiate between what would be original habeas litigation and that which would count as “second or successive” meets AEDPA’s intent. The factual and procedural history supports the Eleventh Circuit’s decision without having to consider the question of the Circuit Court split addressed in *Rivers v. Lumpkin*. Furthermore, the Eleventh Circuit’s analysis comports with pre- and post-AEDPA treatment of post-judgment Rule 60(b) motions as “second or successive” as contemplated in §2244(b). Certiorari should be denied.

It is also worth noting that the split *Boyd* cites is not as sharp as first appears. The procedural history and posture of the cases on the other side of the split—*Ching v. United States*, 298 F.3d 174 (2d Cir. 2002); *Whab v. United States*, 408 F.3d 116 (2d Cir. 2005); and *United States v. Santarelli*, 929 F.3d 95, 104 (3rd

Under §2244(b), the first step of analysis is to determine whether a “claim presented in a second or successive habeas corpus application” was also “presented in a prior application.” If so, the claim must be dismissed; if not, the analysis proceeds to whether the claim satisfies one of two narrow exceptions. In either event, it is clear that for purposes of §2244(b) an “application” for habeas relief is a filing that contains one or more “claims.” That definition is consistent with the use of the term “application” in the other habeas statutes in chapter 153 of title 28. *See, e.g., Woodford v. Garceau*, 538 U.S. 202, 207, 123 S.Ct. 1398, 155 L.Ed.2d 363 (2003) (for purposes of §2254(d), an application for habeas corpus relief is a filing that seeks “an adjudication on the merits of the petitioner’s claims”). These statutes, and our own decisions, make clear that a “claim” as used in § 2244(b) is an asserted federal basis for relief from a state court’s judgment of conviction.

Gonzalez v. Crosby, 545 U.S. 524, 530 (2005).

Cir. 2019)—are different and may have been the source of the different treatment of the amendments in those cases. *Ching* for example did not adjudicate the impact of the filing of a Rule 60(b) motion. In *Ching*, the petitioner filed a second petition in the district court while the appeal from the denial of his first petition was pending in the Second Circuit. *Ching*, 298 F.3d at 175-76. When Ching obtained relief on the appeal of his first petition on unrelated procedural grounds, the case was remanded to the district court. *Id.* at 175-76. However, the district court ruled that the second petition was in fact a second or successive petition and sent it to the circuit court for consideration under §2244. *Id.* at 176.

In its second review of *Ching*, the Second Circuit stated that Ching's second filing was not "second or successive" because at the time it was filed the original petition was still pending on appeal with no final decision made. *Id.* at 178. The circuit court noted that by the time the district court considered the second petition, it had before it both the remanded original petition as well as the second petition which had been filed directly with the district court. *Id.* at 178-79. The circuit court then stated:

Under these facts, we cannot say that adjudication of the initial §2255 motion was complete when Ching filed his August 1998 [second in time] petition. The district court therefore erred in treating Ching's August 1998 petition as a second or successive §2255 motion.FN3

FN3. We also note that this Court has not yet decided whether the dismissal of a habeas petition or §2255 motion as time-barred constitutes a final adjudication on the merits. We have previously held that "when a habeas or §2255 petition [sic] is erroneously dismissed on AEDPA limitations

period grounds, and another petition is filed that presses *the dismissed claims*, the subsequently-filed petition is not ‘second or successive’ if the initial dismissal now appears to be erroneous because the law on which that dismissal was predicated is unarguably no longer good law.” *Muniz v. United States*, 236 F.3d 122, 129 (2d Cir. 2001) (emphasis added).

Ching, 298 F.3d at 178-79 (emphasis supplied). *See also Gonzalez*, 545 U.S. at 538 (holding a “Rule 60(b)(6) motion in a §2254 case is not to be treated as a successive habeas petition if it does not assert, or reassert, claims of error in the movant’s state conviction” noting petitioner had challenged the district court’s ruling on timeliness, not the merits of the constitutional claims); *Banister*, 590 U.S. at 511-21 (noting differences between Rule 59(e) and Rule 60(b) and their interplay with AEDPA and §2244 thereby finding Rule 59(e) is not to be treated as a “second or successive” habeas application whereas Rule 60(b) challenges to a prior adjudicated habeas petition on the merits was a “second or successive”).

Whab likewise dulls the apparent conflict. There the district court had denied habeas relief, and while the petitioner was seeking a COA from the circuit court, he sought leave from the circuit court to file a second or successive petition. *Id.* at 118. While the court in *Whab* “considered” *Ching* as holding that a §2255 proceeding is not final for purposes of the gate-keeping function of §2244 and that a Rule 60(b) motion was not at issue, both *Whab* and *Ching* were decided before this Court’s decision in *Gonzalez*, 545 U.S. at 530-32. In *Gonzalez*, this Court noted that Rule 60(b) motions often are in fact a second or successive habeas petition. “Virtually every Court of Appeals to consider the question has held that such a pleading

[seeking to add a new claim, offer newly discovered evidence to a previously decided claim or a change in the law implicating a prior claim], although labeled a Rule 60(b) motion, is in substance a successive habeas petition and should be treated accordingly.” *Gonzalez*, 545 U.S. at 531. As such, *Whab* may have been decided differently had that court had the benefit of *Gonzalez*.

Santarelli, too, is limited by its unique procedural posture. Its expansive language suggesting that a habeas case is not final until it has been adjudicated on appeal does not have statutory support. Finality, as provided in §2244(b), discusses the claim being final where it has been presented in a “prior application.” What is not contained in §2244(b) defining finality is a requirement that the application be affirmed on appeal. The expanded reading pressed by Boyd that *Santarelli* gave §2244(b) does not have support in the language of the statute itself, and as explained above, would undermine the AEDPA’s treatment of Rule 60(b) motions and post-AEDPA goals.

Also, *Santarelli* should be read to be constrained by its procedural posture. There, the petitioner filed a motion to amend seeking to add new claims while his original petition was before the district court. *Santarelli*, 929 F.3d at 99. The district court denied the motion finding the new claims did not relate back to an original claim when it denied the petition and *Santarelli* appealed. Next *Santarelli* moved the appellate court for leave to file a successive petition. *Id.* at 100-03.

Reviewing the original appeal, the circuit court determined that the motion to amend, which had been filed before the original petition had been decided, should

have been decided first. So the circuit court returned the motion to amend and the petition to the district court for reconsideration. Given the remand, the Third Circuit found the motion to file a second or successive petition unnecessary. The court of appeals reasoned that since the motion filed with the district court while the matter was on appeal did not constitute a second petition under AEDPA, it had returned jurisdiction to the district court via the remand. *Id.* at 103-04, 107. However, the Third Circuit acknowledged:

While an appeal of the district court's denial of the initial habeas petition is pending, however, that court lacks jurisdiction to consider the "motion to amend" because "[t]he filing of a notice of appeal is an event of jurisdictional significance - it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal." *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58, 103 S.Ct. 400, 74 L.Ed.2d 225 (1982).

Santarelli, 929 F.3d at 106. The Third Circuit's resolution of the timing and jurisdiction issues, while being mindful of Rule 15 and AEDPA, was to hold the motion to amend until the appeal was decided on the original habeas petition and then have the district court address the motion to amend. *Id.* at 106. In addressing the motion to amend at that point, the district court would have to give due consideration to Rule 15 standards and the abuse-of-the-writ doctrine. *Id.* The circuit court said that its "holding is a narrow one and represents a limited exception to 28 U.S.C. §§ 2244 and 2255(h) that is in keeping with AEDPA's policy against piecemeal litigation." *Santarelli*, 929 F.3d at 106.

Boyd also points to *Ross v. Adm'r E. Jersey State Prison*, 118 F.4th 553, 563

(3d Cir. 2024), to indicate the Third Circuit continues to follow *Santarelli*. However, Ross does not further Boyd's position either. There, the petitioner filed a Rule 60(b) motion within 28 days of the district court's judgment on the original petition. The circuit court, relying in part on *Banister*, 590 U.S. at 520, reasoned that the Rule(60)(b) motion was interchangeable with a Rule 59(e) *when* filed within 28 days of a judgment. The district court ruled on the motion and that ruling merged with the judgement which the petitioner timely appealed. The Third Circuit's opinion does not undermine the AEDPA finality or comity concerns and does not address directly the issue here. Instead, Ross's Rule 60(b) motion was filed before the time to appeal expired and while the district court had jurisdiction to address challenges to its judgment.

Although this Court did grant certiorari and has heard oral argument in *Rivers v Lumpkin*, it need not await the disposition in that case before disposing of this petition. Again, Petitioner in this case chose to ten months to raise a claim surrounding an allegation of juror misconduct that arose during the federal evidentiary hearing. Since the claim could have been raised well before the district court ruled on the original petition, Boyd's inexplicable delay in waiting to raise the claim until his case was pending on appeal should not be rewarded by additional delay. This delay highlights the gamesmanship which could be played by inmates, especially death row inmates, when seeking federal habeas relief. Such flaunts the AEDPA goals of finality and comity and places additional stress on already overburdened judicial resources. The Eleventh Circuit properly considered Boyd's

attempt to raise the issue in a new claim before the district court to be an improperly filed successive petition. Accordingly, certiorari should be denied.

CONCLUSION

Based on the foregoing arguments and authorities, Respondent requests respectfully that this Honorable Court deny Petitioner's request for certiorari review.

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